

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5261 OF 2005**

Shri. Yogesh Vinod Ahiwale ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri. Sanjeev P. Kadam for the Applicant.
Shri. A.S. Gadkari, A.P.P. for the Respondent.

**CORAM : A. S. OKA, J.
DATE : SEPTEMBER 02, 2005.**

P.C.:

1. Heard the learned Advocate appearing for the Applicant and the learned A.P.P. for the State.

2. The offence alleged against the Applicant and the co-accused is under sections 302, 147, 148, 149, 143 of the Indian Penal Code and section 37(a), 135 of the Bombay Police Act. The learned advocate appearing for the Applicant pointed out that under the order passed by this Court, co-accused have been enlarged on bail. He pointed out that according to the version of the witnesses, the Applicant first broke the bottle in his hand into pieces and thereafter assaulted the deceased on his head. He submitted that the injuries which are found and especially the fractures in the skull are totally inconsistent with the theory propounded by the prosecution. He submitted that in another case, the Applicant has been convicted under section 307 of the Indian Penal Code and is enlarged on bail by this Court subject to condition of not entering the city of Phaltan. He submitted that

considering the fact that investigation is complete and the Applicant is in custody from 07th January, 2004, he deserves to be enlarged on bail.

3. The learned A.P.P. pointed out that the Applicant cannot claim parity on the basis of the orders passed by this Court. He invited my attention to order dated 05th October, 2004 passed by this Court in favour of the co-accused and in particular the observation made therein that the fatal injury on the head of the deceased was caused by the present Applicant. He submitted that there is one more offence registered against the Applicant in the year 2000 under section 324 of the Indian Penal Code and when the Applicant was on bail, the present offence has been committed.

4. I have considered the submissions. While passing the order dated 05th October, 2004, this court was not considering the case of bail of the present Applicant. The observation made by this Court is in the context of the role ascribed to the Applicant in the said Application No.3933 of 2004. The statements of the witnesses show that the Applicant first broke the bottle in his hand and thereafter assaulted the deceased on his head by the bottle. There are fractures in the skull as disclosed in the Post Mortem Notes. There is some substance in the submission that

the fractures would not have been caused as a result of attack by a broken bottle.

5. The age of the Applicant is stated to be twenty-eight years and he is in custody for last more than one and half years. The other offence registered against the Applicant is under section 324 of the Indian Penal Code and that also in the year 2000. In the offence in which he is convicted, this court has already enlarged him on bail subject to stringent conditions. Though the Applicant is not entitled to claim parity, considering the facts and circumstances, he is entitled to be enlarged on bail.

6. Hence, I pass the following order:

: O R D E R ;

i) The Applicant shall be enlarged on bail in connection with **C.R.No.04 of 2004 of Phaltan Police Station**, subject to furnishing a personal bond of **Rs.15,000/-** with two local sureties in the like amount.

ii) The Bail is granted subject to condition that till the conclusion of trial, the Applicant will not enter the area falling within the jurisdiction of Phaltan Police Station.

iii) The effect will be given to this order only after the Applicant furnishes to the Investigating Officer a detailed address of the place of residence where he proposes to stay after he is enlarged on bail.

iv) The Bail is granted subject to condition that till the conclusion of the trial, he will report to the concerned local Police Station once a week.

v) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

vi) The Applicant shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

vii) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

viii) Application is disposed of in above terms.

ix) The parties to act upon an authenticated copy of this order.

JUDGE